

OGC Has Reviewed

MEMORANDUM FOR THE FILES

SUBJECT: Espionage Law.

See 4 Lawyers Guild Review 27 (No. 3 June-July 1944) for article on The Supreme Court and the Espionage Act of 1917.

A comment on Hartzel v. United States in which the Supreme Court reversed the CCA where the defendant had been found guilty of wilful obstruction of the recruiting and enlistment service of the United States, and of a wilful attempt to cause insubordination, disloyalty and refusal of duty in the military and naval forces of the United States. The defendant wrote three articles which were the basis of his conviction and mailed to several individuals.

The decision revolved about the sufficiency of evidence to show the specific intent required by the statute. "There is clear intimation," the comment states, "that had proof of intent been sufficient, the majority would have had no difficulty in sustaining the conviction." The comment further suggests that a prosecution under section 1 of the Act might have been more successful as it would have freed the Court from the necessity of finding the specific intent to cause mutiny or insubordination as the question would then have been only whether the statements made by the defendant were false and promoted the success of our enemies.